

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

STATE OF NEW YORK, :

Plaintiff, : CV 82-2228
(LDW)

-against- : INTERIM CONSENT DECREE

UNITED STATES OF AMERICA, :
CASPAR W. WEINBERGER, as :
Secretary of Defense; and :
VERNE ORR, as Secretary of :
the Air Force, :

Defendants. :

-----X

The State of New York ("New York") plaintiff herein, by its Attorney General, Robert Abrams, and the United States of America, et al., ("United States") defendant herein, agree as follows:

Recitations

1. New York filed a complaint in this matter on July 29, 1982, and the United States filed an answer on October 15, 1982. Subsequently, an amended complaint and answer to the amended complaint were filed on December 9, 1983 and February 14, 1984 respectively.

2. The amended complaint alleges, inter alia, that the United States by its acts and omissions, caused the release of hazardous substances into the environment of the Suffolk County airport, and that as a consequence of these releases the soil and groundwater at and in the environs of the Suffolk County airport have become contaminated with

356563



hazardous substances. The answer to the amended complaint, inter alia, denies liability.

3. By motion dated November 5, 1984 the United States moved to dismiss the amended complaint or in the alternative for summary judgment.

4. By memorandum of decision and order dated October 8, 1985, the Court granted defendant's motion for summary judgment insofar as the first eight causes of action enumerated in the amended complaint were dismissed. However, the Court denied defendant's motion with respect to the CERCLA claims, the ninth cause of action enumerated in the amended complaint.

5. Analyses of groundwater samples obtained from the environs of a firefighting exercise area, hereinafter the "Burning Pit Site," located on the Suffolk County Airport as shown in appendix "A" show the presence of hazardous substances including trans-1, 2-dichloroethylene; 1, 1 dichloroethane; 1,1,1-trichloroethane; trichloroethylene and trace amounts of 1,1,2,2,-tetrachloroethane and tetrachloroethylene.

6. New York asserts that analyses of groundwater samples taken from the environs of a landfill area located in the southeastern corner of the Suffolk County Airport, as shown in appendix "A", hereinafter the "Southeastern Landfill site" indicate contamination with hazardous substances including acetone, diisopropylketone, methylethylketone, carbon disulfide and diethylether. The

United States asserts that it lacks sufficient information to admit or deny this assertion.

7. New York asserts that analyses of soil samples taken from the environs of a landfill area located on the eastern perimeter of the Suffolk County Airport near a former dog kennel area, as shown in appendix "A", hereinafter the "Dog Kennel site", indicate contamination with polychlorinated biphenyls (PCB's). The United States asserts that it lacks sufficient information to admit or deny this assertion.

8. Field investigations and groundwater analyses have not established the continued presence in the groundwater of hazardous substances attributable to the release of military type jet fuel (JP4) on or before February 25, 1974 at the fuel tank farm located on the Suffolk County Airport as shown in appendix "A". On or about December 1985, petroleum product was found floating on the water table at and in the environs of the fuel tank farm. Recent analyses indicate that this petroleum product, which appears to be of a recent origin, was released into the environment sometime after February 25, 1974. The United States asserts that the petroleum product is primarily Jet A type fuel from the underground storage tanks owned and operated by the Suffolk County Airport Authority. New York asserts that it lacks sufficient information to admit or deny this assertion.

9. In light of the foregoing recitations the United States and New York hereby stipulate to the following

terms and conditions and consent to the entry of this interim consent decree.

Site Investigation

10. The United States represents that it is in the process of implementing the Air Force Installation Restoration Program ("IRP"), annexed hereto as appendix "B", with respect to the

- (1) Burning Pit Site,
- (2) Southeastern Landfill Site, and
- (3) Dog Kennel Site.

11. The United States shall implement IRP Phases II and IV-A with respect to the Burning Pit Site. The parties agree that a Phase I records search is unnecessary. In April of 1986 the United States submitted to New York a Statement of Work for Phase II/IV-A Site Characterization/Remedial Action Plan for the Burning Pit Site. New York believes, in general, that the statement of work is adequate and sufficient to achieve the objectives of IRP Phases II and IV-A, that is, to determine the extent and degree of contamination at this site and to select and describe a remedial action appropriate for mitigating environmental contamination. However, both the United States and New York have agreed that some changes to the Statement of Work are appropriate. On July 17, 1986 the United States submitted to New York a re-draft of the Statement of Work for Phase II/IV-A which is annexed hereto

as appendix "C". New York will evaluate the Plan and specify in writing any perceived deficiencies and any recommended modification. If the plan is revised, the United States shall submit the revised plan to New York. The United States shall notify New York in the event that no revisions are made.

12. The United States shall implement an IRP Phase I records search regarding the Southeastern Landfill site and the Dog Kennel site. The results of the Phase I work shall be made available to New York for its review and comment. Based on the information generated by the Phase I work, the United States may prepare and submit to New York for review and comment a draft Phase II Site Characterization Plan for the Dog Kennel site and/or for the Southeastern Landfill site. New York will evaluate the Plan(s) and specify in writing any perceived deficiencies and any recommended modifications. If the Plan is revised, the United States shall submit the revised Plan to New York. The United States shall notify New York in the event that no revisions are made.

Notification and Comment Procedures

13. Whenever this Consent Order calls for the development of a plan including a site characterization plan or remedial action plan by the United States, such plan(s) shall be submitted and reviewed according to the following procedure:

[a] a copy of each draft plan shall be mailed to:

- (i) Nancy Stearns
Norman Spiegel
New York State Department of Law
Two World Trade Center
New York, New York 10047
- (ii) Laine Vignona
New York State Department of Law
Two World Trade Center
New York, New York 10047
- (iii) Norman H. Nosenchuck, P.E.
Director, Division of
Solid and Hazardous Waste
Attn: John Iannotte, P.E.
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233
- (iv) Tony Candela, P.E.
NYSDEC
State University of New York,
Building No. 40
Stony Brook, New York 11794
- (v) Steven V. Cary, P.E.
Suffolk County Department of
Health Services
225 Rabro Drive East
Hauppauge, New York 11788

Any person listed above may designate in writing an alternative person to receive such plan.

[b] After receiving a draft plan, New York shall submit any comments, perceived deficiencies, or recommend modifications to the United States within 30 days after receipt of a draft site investigation plan and within 60 days after receipt of a draft remedial action plan. Such comments by New York shall be provided to:

- (i) George B. Henderson II
U.S. Department Justice

Environmental Defense Section
L'Enfant Plaza Station
P.O. Box 23986
Washington, D.C. 20026-3986

(ii) Lt. Col. Richard Lotz
HQ USAF/JACL
Pentagon, Room 5E467
Washington, D.C. 20330-5120

and in the case of plans relating to the Burning Pit site,
to

(iii) Arthur Lee
ANCSC/DEV
Stop 18
Andrews Air Force Base
Md. 20331

and in the case of plans relating to the Southeastern
Landfill site and the Dog Kennel site, to

(iv) AFRCE - ER Attention Dan Lane
526 Title Building
80 Pryor Street S.W.
Atlanta, Georgia 30335-6801

[c] The United States shall not commence any work
under this Consent Decree before the end of the applicable
comment period.

Dismissal of Fuel Tank
Farm Cause of Action

14. The cause of action premised on the allegations
contained in paragraphs 20 through 30 of the amended
complaint respecting the discharge of military jet fuel at
and in the environs of the Fuel Tank Farm is hereby
dismissed with prejudice.

Access to Site, Data Sharing and Cooperation

15. The United States shall, whenever possible, give New York 10 days notice prior to any field work, including but not limited to, the drilling of monitoring wells, the taking of samples, or performance of remedial work. In the event that it is not possible to give 10 days notice then reasonable notice, under the circumstances, shall be given.

16. New York shall have the right to designate one or more representatives to observe and provide comments and suggestions on the field work conducted during the site investigations and remedial action. These representatives and the United States and its representatives shall confer on a timely basis and cooperate in the accomplishment of the goals of any site investigations and remedial action programs. The United States shall permit New York's representatives access to the areas of concern and their vicinity during normal business hours and whenever field work is performed for the purpose of monitoring, sampling, and observing activities carried out under this Consent Decree. New York agrees that its representatives will comply with all rules and regulations established for the protection of health, safety, and security.

17. Whenever sampling is performed, New York shall be entitled to obtain split samples from the United States.

18. The United States shall provide all results of sampling and analyses, and other relevant data generated

pursuant to this Consent Decree to New York as soon as practicable. New York shall likewise provide all similar data generated by the State or its agents or consultants to the United States as soon as practicable.

Delay of Prevention of Performance

19. In determining whether the United States is acting in a timely fashion, any failure or delay by the United States or its contractors to conduct any work under this Consent Decree shall be excused, and time for performance extended, to the extent such failure or delay is caused by circumstances beyond their control or not reasonably foreseeable. Such circumstances include, but are not limited to, acts of God, acts of war, strikes, failure of performance or excusable delays by contractors, and adverse weather. The United States will notify New York of any such delay and its cause promptly upon discovery of the delay.

Resolution of Disputes

20. Any dispute which arises with respect to the meaning or application of this Consent Decree shall, in the first instance, be the subject of informal negotiations between New York and the United States. If the parties cannot resolve the dispute within a reasonable time, then any party may file a petition with this Court setting forth the matter in dispute and the relief requested.

Continuing Jurisdiction of the Court

21. The Court shall maintain jurisdiction of the CERCLA claim of the State for the purpose of enabling the parties to apply to the Court for supplemental relief which they deem appropriate during the period of retained jurisdiction, including a final consent decree. The parties preserve all rights and opportunities to object to any relief sought by any party at any time during the period of retained jurisdiction.

Miscellaneous Provisions

22. Upon the filing of this Interim Consent Decree New York shall file a second amended complaint, attached hereto as appendix "D" setting forth a claim against the United States arising from the contamination at and in the environs of the Dog Kennel site. The time for filing an answer to such second amended complaint shall be stayed until such time as a dispute should arise concerning the Dog Kennel Site. If a dispute between the parties should arise concerning the Dog Kennel site, except as provided for in paragraph 12, the United States reserves the right to file an answer to the second amended complaint, and reserves all rights and defenses with respect to the allegations made in the second amended complaint.

23. The implementation of the terms of this Interim Consent Decree by the United States is subject to the availability of appropriated funds. Nothing in this Decree shall be construed to obligate the United States or any of

its officers or representatives to seek appropriation of money to carry out the terms of this Decree.

24. This Consent Order does not resolve certain issues raised in this litigation including but not limited to: the obligation, if any, of the United States to perform remedial action; the appropriate cleanliness standard and or standards for remediation of sites, restitution of New York's response costs, damages to the natural resources of New York and releases for the United States. These issues are each reserved without prejudice to any claim, right or defense.

25. New York reserves the right to perform any work including field work, with respect to the sites, as it deems necessary and to seek reimbursement from the United States for the costs incurred. The United States reserves all rights and defenses with respect to any claim made against it for such costs.

Dated: *October 15*, 1986

THE STATE OF NEW YORK

ROBERT ABRAMS
Attorney General of the
State of New York

By:

Norman Spiegel
NORMAN SPIEGEL
NANCY STEARNS

2 World Trade Center
New York, New York 10047
212-488-6226
212-488-6249

THE UNITED STATES OF AMERICA

F. HENRY HABICHT II
Assistant Attorney General

By:

George B. Henderson II
GEORGE B. HENDERSON II
U.S. Department of Justice
Environmental Defense Section
L'Enfant Plaza Station
P.O. Box 23986
Washington, D.C. 20026-3986

Richard E. Loh
LT COL RICHARD LOH

Dated: Uniondale, New York
 , 1986

LEONARD D. WEXLER, U.S.D.J.